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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,409	12/12/2003	Eric L. Langley	63733.2	1167
27883	7590	03/10/2006	EXAMINER	
GRADY K. BERGEN 3333 LEE PARKWAY SUITE 600 DALLAS, TX 75219			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/734,409		LANGLEY, ERIC L.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Marie Patterson		3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24,26,28-49 and 51-74 is/are pending in the application.
- 4a) Of the above claim(s) 14,16-22,39,41-47,56,57,65 and 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13,15,23,24,26,28-38,40,48,49,51-55,58-64 and 67-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Applicant's election of Group I, Figures 1-4B in the reply filed on 9/16/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 14, 16-22, 39, 41-47, 56, 57, 65, and 66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/16/05.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6-9, 11, 12, 23, 26, 28, 29, 31-34, 36, 37, 48, 51-54, 58-64, 67, 69, 70, and 72-74 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sand (5894684).

Sand shows a system (see figure 18) comprising a sole inliner (12 and/or 62), a coupling (14 or thin back portion shown in the figures) which is biased (see column 5 lines 39-42), a back inliner (16 and/or 74), an upper (68) with a flexible member (laces), and a cover (64) as claimed.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 5, 10, 29, 30, 35, 67, 68, 70, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand in view of either McDonald (5319869) or Aveni (5467537).

Sand shows a system substantially as claimed except for the exact upper neoprene flexible member. Either McDonald or Aveni teaches providing a flexible neoprene member (11 or 30) in an upper. It would have been obvious to provide a flexible neoprene member as taught by either McDonald or Aveni in the system of Sand to provide a tighter, more conforming fit.

7. Claims 24 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand.

Sand shows a system substantially as claimed except for the shoe sole being non-cleated. Official notice is taken that it is well known and conventional to provide snowboarding boots with either cleats or with a non-cleated sole as a matter of design or preference choice. It would have been obvious to make the sole cleated or non-cleated in the system of Sand for design or specific terrain requirements.

8. Claims 1-4, 6, 7, 11, 13, 15, 23-29, 31, 32, 36, 38, 40, 48-55, 58, 60-64, 67, 69, 70, and 72-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borden (5090138) in view of Quackenbush (6102881).

Borden shows a system comprising a sole inliner (12), a coupling (16, 38, or 38B), a back inliner (14), an upper (40/46), and a flexible member (laces) substantially as claimed except for providing the coupling only in the back portion of the footwear system. Quackenbush teaches providing a spring biased coupling (16) which couples a sole inliner (14) with a back inliner (12) and the back inliner is located only in the back portion, i.e. it does not cover the ankle. It would have been obvious to form the inliner and coupling as taught by Quackenbush in the system of Borden to reduce the weight of the shoe, to reduce the pieces and price of the shoe, etc..

#### ***Response to Arguments***

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson  
Primary Examiner  
Art Unit 3728